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Supreme Court, U.S.
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IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 1993

MAHESH C. SIKKA PETITIONER

vs

MICHAEL P.W. STONE
Secretary,
DEPARTMENT OF THE ARMY RESPONDENT

PETITION FOR WRIT OF CERTIORARI
TO THE UNITED DISTRICT COURT
AND
TO THE UNITED STATES COURT OF
APPEALS FOR THE FOURTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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LICENSED ARCHITECT
PETITIONER
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PETERSBURG, VA. 23803

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QUESTIONS PRESENTED FOR REVIEW

Has the petitioner been given punitive damage of $250.000.00, retroactive pay of GM-808-13 from June 17, 1985 to February 1991, front pay of GM-808-14, Supervisory Architect position of GM-808-14 from February 1991 and cash award for suggestion?

Whether the petitioner has been discriminated based on race (Asian), National origin (Indian) and reprisal of prior EEO activities?

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UNITED STATES OF AMERICA

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Secretary,
Department of the Army RESPONDENT

PETITION FOR WRIT OF CERTIORARI TO
THE UNITED STATES DISTRICT COURT
AND
UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

Petitioner, MAHESH C. SIKKA, respectfully prays that a writ of certiorari issue to review the order (appendix 1) and final orders of the

United States District Court for the Eastern District of Virginia (Appendix 2) and Judgement of the United States Courts of Appeal (Appendix 4).

JURISDICTION

The United States District Court for the Eastern District of Virginia, at Richmond, had jurisdiction. Petitioner filed the appeal and objections to the final orders of District Court on July 6, 1992 (Appendix 3). United States Court of Appeal issued the opinion on July 26, 1993 (Appendix 4). A timely petition for rehearing was filed on August 4, 1993 (Appendix 5). The Court of Appeals denial of petition for rehearing was issued on August 1993 (Appendix 6).

STATEMENT OF THE CASE

This civil action involves petitioner's three EEO complaints of discrimination which were filed in 1985,1986 and 1987 with the Army Equal opportunity employment office at Fort Lee, Va., based on race (Asian), National origin (Indian) and reprisal of prior EEO activities.

These three complaints had 13 allegations which show continuous pattern and practice of discrimination.

1. Denial of opportunity for advancement
2. Denial of awards
3. Denial of TDY
4. denial of promotion to the position of Supervisory Architect, GM-808-13
5. Denial of desk audit

6. Denial of opportunity to serve as acting chief

7. Petitioner's 1986 performance appraisal

8. Denial of Detail to the position of Supervisory Architect in Sept. 1986

9. The rejection of referral list for the position of Supervisory Architect GM-808-13

10. The manner in which petitioner was temporarily detailed to the Supervisory Architect position and the manner in which the detail was terminated in August 1987

11. The agency's favorable treatment to white employees and applicant including preparing job descriptions according to their qualifications, providing them with awards and creating jobs for them

12. The abolishment of the Supervisory

Architect position

13. A counseling session given to petitioner in September 1986

ALLEGATION 2

1. Petitioner submitted the suggestion on 14 December 1984 and Department of the Army has adopted the petitioner's suggestion.

2. Ms. Elvell, an incentive award administrator, provided a sworn testimony during USACARA investigation that she recalled petitioner's name as a suggestor, pp 212, line 22-24 & pp 213, line 1.

3. Army adopted the suggestion without informing the petitioner. When petitioner came to know that Army had adopted his suggestion, petitioner filed the complaint.

4. Defendant had agreed and it appears

on final court orders, para 14 "Plaintiff suggestion reflects on commissary projects".

5. Management provided a sworn testimony during USACARA investigation that petitioner's suggestion was "Darn good suggestion and a smart one" and he was in favor of petitioner's suggestion, pp 46, line 11-15, pp 47 line 1-4. After adopting petitioner's suggestion, the agency was actively involved in participating in negotiation with an A&E firms.

6. Petitioner's suggestion saved approximately $2.5 Million dollars per project.

7. This was one of the biggest achievement in agency's history.

8. Petitioner's suggestion was totally implemented, Army benefitted, the government benefitted and saved millions

of dollars and petitioner was not given an award.

9. Army suggestion program AR-672-70 clearly indicates that award be given if suggestion has been adopted.

ALLEGATION 4

10. The agency posted a job opportunity announcement for the position of Supervisory Architect, GM-808-13, with an opening date of March 26, 1985 and closing date of April 8, 1985. The announcement identified the following placement factor: **DESIGN AND FIELD INSPECTION EXPERIENCE IN COMMISSARIES AND/OR DINING FACILITIES TO INCLUDE ENERGY CONSERVATION.**

11. CPO, Fort Lee, established the crediting plan in four elements and assigned the maximum of four points in each elements.

12. Area of consideration was intentionally extended beyond Fort Lee to bring Mr. Mouring because management including Col. Ratcliffe, Director and Mr. Beck, Deputy Director, Directorate of Engineering and Materiel knew him personally.

13. Mr. Mouring selectee, submitted an application on Feb. 28, 1985 with a cover letter dated March 1, 1985 before the job announcement which had opening date of March 26, 1985.

14. Management and CPO, Fort Lee, colluded to qualify Mr. Mouring for GM-808-13 Supervisory Architect position, even though Mr. Mouring did not meet placement factors that had been established for the position.

15. CPO evaluated all the applicants and provided a rating of thirteen (13) to the petitioner and thirteen (13) to

Mr. Mouring, the selectee.

16. Selectee's application shows that he had no experience in commissaries and or dining facilities to include energy conservation which was a mandatory requirement for this position. Therefore he was not qualified for this position.

17. DA Form 2600 indicates that "all eligible serviced by the Fort Lee Civilian personnel office (CPO) and referred for consideration on DA 2600 must be interviewed before any selection can be made.

18. Selecting official gave a sworn testimony during USACARA investigation that he interviewed all the candidates.

19. Selecting official's testimony is false, fraudulent and discriminatory because Mr. Mouring (selectee) also provided a sworn testimony during USACARA investigation that he was never

interviewed. Mr. Mouring also testified that he was not a very productive employee while working at Fort Monroe pp 38, line 25; pp 39 line 1-14; pp 153, line 1-12. Therefore, Form 2600 "Selection Form" forwarded to CPO is invalid.

20. QMCENFL Reg 690-1-1, para H-1.d, states that "All eligible serviced by local civilian personnel office on a certificate shall be interviewed. Para H-2, further states that the selecting officials are required to evaluate and select candidates solely on job-related criteria and remain obligated to state this criteria and merit based reasons for their selection in response to charge of discrimination and or claim of a prohibited personnel practice.

21. Therefore any rating provided to Mr. Mouring, the selectee, is invalid

because he was not interviewed and job related questions were not asked.

22. Petitioner had superior ratings in all four job elements. Petitioner had 11 "A's" rating whereas selectee, Mr. Mouring had only one "A" rating.

23. Selecting official provided 18 points to the selectee based on interview where as 16 points was the limit. Selecting official failed to use job related criteria and crediting plan. Selecting official did not interview the selectee but provided highest rating to the selectee in a discriminatory manner knowing that he had not met the placement factors and had no experience in accordance with placement factor.

24. The Selectee did not have any Supervisory experience of supervising any professional architects and engineers. He was just employed by

Department of Army, Fort Monroe, as a General Engineer GS-11 (1-1981 to 1-1983) and GS-12 from 11-84 to 5-85 and he had no experience in architecture during that period.

25. Management intention was to bring white employee on a supervisory position.

26. The selecting official failed to adhere to affirmative action policy and had a great opportunity to select the petitioner on the basis of affirmative action plan as petitioner was highly qualified applicant performing all managerial tasks and was the only professional architect working in the agency. Agency also failed to adhere to affirmative plan when they knew that there were 100% white management on the board and zero percent (0%) representation of management positions.

ALLEGATION 8

27 On August 22, 1986, Mr. Mouring, selectee of Allegation 4, left the agency. The agency began its efforts to fill the position of Acting Chief.

28. Mr. Figuieras detailed Mr. Langevin, white employee, Industrial Specialist, was not eligible and qualified for Supervisory Architect position. There is no business for Mr. Figuieras to detail unprofessional white employees to supervise architects, when architect, (petitioner) is available for detail.

29. Petitioner discussed this matter with Mr. Fulmore, Deputy commander, U.S. Army Troop Support Agency (TSA) and Col. Ratcliffe, Director, DEM, who also attended the meeting. Mr. Fulmore indicated during this meeting that management could not detail Mr. Sikka, petitioner, as he was eligible and

qualified for Supervisory Architect GM-808-13 position and it might constitute the pre-selection for this job.

30. These officials intentionally provided false statements knowing that they had already requested higher SKAP criteria then petitioner SKAP criteria rating (Allegation 9).

31. Petitioner contacted CPO who backed him up by stating that "such an action does not constitute pre-selection.

32. On one side commanding official made a statement that petitioner is eligible for GM-808-13 Supervisory Architect position then on other side they rejected the career referral list when petitioner was on the referral list. This is discrimination and reprisal.

ALLEGATION NO. 9

33. ON December 1985, based on

petitioner's recommendations, the TSA commander notified the petitioner that future GM-808-13 vacancies would be filled under the career referral program.

34. On 22 August 1986 Mr. Mouring (selectee of allegation 4) left the agency. The agency began its efforts to fill the position of Supervisory Architect.

35. On August 31, 1986, management said "we have two people who can compete for this job". During USACARA investigation sworn testimony of selecting official Mr. Figuieras indicates that two people he talked about were (1) the petitioner, minority and other black employee minority, both minorities were working in TSA as an Architects, pp 57, line 18-24; pp 58, line 1.

36. On August 20, 1986, CPO, Fort Lee, requested a career referral list from

Headquarters, U.S. Training and Doctrine Command (TRADOC) for the position of Supervisory Architect GM-808-13, chief of design branch.

37. On October 7, 1986, TRADOC and Fort Lee submitted a bonafide career referral list with four best candidates in the entire TRADOC which controls eighteen Army Installations. Petitioner's name was referred.

38. On October 21, 1986, Col. Ratcliffe, Messrs Beck and Figuieras, returned the referral list indicating that "no selection was made because individuals on referral list did not meet the acceptable rating criteria.

39. Management returned the referral list, however failed to show that these referral candidates were not sufficiently qualified to perform the duties of the position irrespective of the artificial

requirements that they put forth.

40. Petitioner rating was either MET OR EXCEEDED 17 OF 24 minimum rating elements requested by management. Rejecting the list clearly indicates disqualifying the petitioner for that job position.

41. CPO is derelict in their responsibilities in not drawing to the attention of the management their responsibilities or selecting when petitioner was on the referral list.

42. Management's intention was to seek another applicant when petitioner was on the referral list as a qualified candidate.

43. Management took all sorts of steps to avoid considering petitioner for the Supervisory Architect position by putting extremely strong requirements for this position when this was not necessary.

44. Management was aware of the

petitioner rating elements, created discriminatory and artificial barrier by requesting higher minimum acceptable criteria than petitioner element rating. This is strong evidence of discrimination and reprisal by avoiding petitioner for Supervisory Architect position.

45. Mouring's selectee, (Allegation No. 4), rating was lower than petitioner and much lower than minimum acceptable rating. Petitioner's had 11 "A's" rating and Mr. Mouring had only one "A" rating.

46. After rejecting the career list of Oct. 26, 1986, CPO, Fort Lee requested another referral list from DA Headquarters in December 1986 which had 39 names excluding petitioner name. Management approved this career list even though these applicants did not meet minimum acceptable rating elements.

47. If management could approve second

career list from Department of the Army Headquarters then management should have approved the previous career list when petitioner's name appeared on that list and selection should have been made from that list.

48. Management acted in an extremely discriminatory manner, they did every thing they could do to avoid considering petitioner for the job position and they were successful.

REASONS FOR GRANTING THE WRIT

Certiorari should be granted on the following numerous reasons:-

1. District Court adopted and rubber stamped the defendant's proposed findings and conclusion of law submitted by the defendant on April 27, 1992, while rendering the judgement for the defendant.

2. Final orders issued by the District Court have numerous violations of rules and regulations of Department of the Army and false statements.

3. Petitioner strongly feels that District Court felt inappropriate to provide the favorable judgement for the petitioner against Department of the Army and Government and has done injustice.

4. Final orders of the District Court paragraph 1 of 4 indicates that plaintiff was promoted to GM-808-13 effective October 1, 1991. The question before the court was whether petitioner received Supervisory Architect position or not.

5. TSA was consolidated with other services as a part of the Defense Commissary Agency (DeCA). In DeCA all professional architects, engineers, Industrial Specialist positions were upgraded to GM-13 and supervisory

Architects and engineers positions were upgraded to GM-14. Petitioner applied for both GM-14 positions and was considered ineligible. Had not he been discriminated in 1985, he would have been eligible and got GM-14 Supervisory Architect position, like previous Design Branch chief who used to be GM-13 got GM-14. Wherefore petitioner prays for judgement for promotion to GM-14 Supervisory Architect with regards to front pay.

6. Petitioner requested the District Court that his representative Mr. Reuben B. Greene be allowed to sit in all court proceedings as his technical advisor. Defendant objected this request and court issued the order and denied petitioner's request. Whereas Department of the Army was represented by United States attorney and Department of the Army was allowed to

participate in the entire hearing.

7. Record shows that defendant has provided pretextual statements and did not even provide the legitimate nondiscriminatory reasons for any of the petitioner's allegations.

CONCLUSION

1. For the reasons set forth above, a writ of certiorari should be issue to review the judgement of the District Court, Court of Appeals and all the allegations stated in this petition.

2. Petitioner strongly feels that District Court final orders has numerous violations against rules and regulations of Department of the Army and false statements.

3. The record and testimonies have proven management did in fact discriminated against petitioner.

4. District Court failed to trial other ten allegations which show continuous pattern and practice of discrimination against petitioner.

5. Petitioner respectfully prays that final orders of the District Court, opinion of the Court of appeals be annulled and this case be heard in the Supreme Court of the United States.

Dated: November 12, 1993

Respectfully Submitted

MAHESH C. SIKKA

Petitioner; pro se

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF VIRGINIA

Richmond Division

MAHESH C. SIKKA	)
Plaintiff,	)
v.	)File No.
MICHAEL P.W. STONE, Secretary,	)91-613
DEPARTMENT OF THE ARMY,	)
Defendant.	)

ORDER

This matter is before the Court on the Defendant's partial motion to Dismiss and Motion for partial summary Judgement, pursuant to Rules 12(b) (6) and 56. This motion is to be decided on the briefs. For the reasons stated in the accompanying Memorandum Opinion, all of the allegations in the complaint are Dismissed WITH PREJUDICE except allegations 2, 4, and 9.

In addition, the Plaintiff's motion to have Mr. Reuben Greene appointed as a "technical adviser" is Denied. Plaintiff's Motion to amend his Complaint to add punitive damages is DENIED, although the Court GRANTS Plaintiff's Motion to Amend to add a request for front pay at the GM-14 level.

It is so ORDERED.

Let the Clerk send a copy of this Order to the Plaintiff and to all counsel of record.

4/30/92 RICHARD L. WILLIAMS

DATE UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA

Richmond Division

MAHESH C. SIKKA, Plaintiff,	)	
v.	)	File No. 91-613
MICHAEL P.W. STONE, Secretary, DEPARTMENT OF THE ARMY, Defendant,	)	

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter came before the Court for a bench trial on April 30, 1992 on consideration of the Plaintiff's Title VII claims. Following trial, the Court now makes the following Findings of Fact and conclusions of Law pursuant to Rule 52 of the Federal Rules of Civil procedure.

I. FINDINGS OF FACT

1. The Court incorporates by reference the Joint Stipulations of Fact filed by

the parties on April 27,1992.

2. Plaintiff is a Federal Civil Service Employee of the Department of the Defense, currently working for the Defense Commissary Agency (DCA) at Fort Lee, Virginia.

3. During the relevant times of this action, Plaintiff was employed by the Department of the Army as GS-808-12 architect with the Troop Support Agency (TSA) at Fort Lee, Virginia, having assumed those duties in March 1982.

4. Plaintiff was promoted to a GM-808-13 position effective October 1, 1991.

5. On October 1, 1991, TSA was reorganized along with other service commissaries as part of the newly formed DCA.

ALLEGATION 2

6. On December 14, 1984, Plaintiff drafted a suggestion on Department of

the Army Form 1045, the appropriate from. Plaintiff suggested that a TSA architect sit with the Corps of Engineers (OCE) representative when OCE negotiated Architectural and Engineering (A/E) firm selected to design a commissary.

7. Plaintiff discussed his suggestion with Jack Figuieras, his second-line supervisor, and Colonel Radcliffe, director, DEM. They considered the suggestion a good idea.

8. Neither Colonel Radcliffe nor Jack Figuieras discouraged Plaintiff from submitting his suggestion to the Incentive Awards office (IAO) at Fort Lee, and neither gentleman told Mr. Sikka that they would submit his suggestion for him.

9. During this period, Army Regulations authorized the payment of
cash awards to individuals whose

suggestions saved the Army money, if the suggestion was outside the suggester's job responsibilities.

10. Plaintiff admits that he never submitted his suggestion to IAO for evaluation, although the suggestion itself contains that instruction.

11. The Fort Lee Incentive Awards office, which ran the Army suggestion program in the 1984-1985 time frame, has no record of any suggestion ever submitted by Plaintiff.

12. Plaintiff's suggestion was never evaluated for a possible cash award.

13. Plaintiff never received a cash award for his suggestion.

14. Design directives issued by OCE in 1985 for commissaries at Fort Polk and Ft. Leonard Wood appear to reflect Plaintiff's suggestion.

15. Under Army Regulation 672-20,

proprietary rights to a suggestion automatically expire two years after the adoption of the suggestion.

16. Under Army Regulations, a suggester may request an investigation and report from the IAO if he believes that official action has been taken to implement all or a portion of the suggestion during the period for which proprietary rights have been granted.

17. Plaintiff admits that he never requested such an investigation and report from the IAO.

ALLEGATION 4

18. The GM-808-13 supervisory architect position (chief, Design Branch), was new when Plaintiff applied for promotion consideration in April 1985, under Job Opportunity Announcement (JOA) 138.

19. The GM-808-13 position encompassed the supervision of a work force of

approximately 9 engineering type personnel, graded from GS-07 to GS-12 and engaged in professional engineering, architectural, and engineering technician work.

20. The GM-13 position would normally have been filled via recruitment under the career program referral system for engineers and scientists. The career program for TSA was run by the Army Training and Doctrine Command (TRADOC). At the time the GM-13 position was created, TRADOC had no career program manager, thus TRADOC authorized TSA to recruit for the vacancy using local referral list.

21. Plaintiff and John Mouring were referred on the local referral list as two of the five best-qualified candidates.

22. The Civilian Personnel Office

staffing specialist who handled this recruitment determined that the referred candidates met all of the selective placement factors indicated on JOA 138.

23. The selecting official for the supervisory architect position was Jack Figuieras, a GM-14 supervisory industrial specialist and chief, EDD.

24. Jack Figuieras had brought Plaintiff into EDD in March 1982, and had served as Plaintiff's second-level supervisor for the three years preceding recruitment for the GM-808-13 position.

25. By use of a matrix he prepared, Mr. Figuieras evaluated the promotion candidates in the areas of supervisory ability, architectural and engineering (A/E) knowledge, knowledge of energy conservation techniques, and ability to develop food service systems/design programs for TSA projects.

26. Each candidate for the position was interviewed for the job, three in person and two by phone.

27. John Mouring, whom Mr. Figuieras selected for the GM-808-13 position, was substantially better-qualified and more experienced than Plaintiff in a number of areas, especially in the area of supervisory ability. Mr. Mouring had about 19-20 years experience in supervising others; Mr. Sikka only had about 4 years of such experience.

28. After Mr. Mouring, Mr. Gerald Nelson was the second-best candidate, and Mr. Stephen Hagan was the third person recommended for the position. The Plaintiff ranked fourth on the five-person list.

ALLEGATION 9

29. In December 1985, the commander, TSA, determined that future GM-13

vacancies at TSA would be filled under the career referral program (CRP).

30. Though TSA had no career program manager in April 1985 (during the first recruitment for the supervisory architect position), Marvin Beck, deputy director, DEM, was designated as the TSA career program manager shortly thereafter.

31. CRP is an Army-wide program used to provide promotion and selection officials with a list of qualified candidates for a particular position.

32. A federal employee must be registered in the CRP to be placed on the CRP referral list for promotion or selection to specific positions within the Army's civilian workforce.

33. The registration process for the CRP is voluntary and must be initiated by the employees.

34. To register for the career program,

Mr. Sikka evaluated himself in 24 different SKAP (Skills, knowledge, abilities, and performance) elements. Plaintiff's supervisors, Jack Figuieras and Marvin Beck, also evaluated plaintiff on the 24 SKAP elements.

35. Plaintiff's career program registration was forwarded to the TRADOC manager for the engineering and scientists career field.

36. At TRADOC, a panel of subject matter experts completed SKAP ratings on plaintiff and others who registered for the engineering and scientists career program, and entered all registrants' SKAP ratings in a computer data base.

37. Upon John Mouring's departure from the GM-13 position in August 1986, DEM began recruitment for Mouring's successor by requesting from TRADOC a career program referral list.

38. Part of that effort required DEM to formulate minimum SKAP element rating for the position to be filled and to then forward the minimum rating to TRADOC.

39. TRADOC should have then entered the minimum SKAP ratings requested by DEM into its data base, and generated a referral list of those architects who possessed the desired minimum SKAPs.

40. In October 1986, TRADOC furnished DEM a career referral program containing four names, including Mr. Sikka's.

41. Along with the referral list, TRADOC furnished the career-program SKAP ratings for the four referred candidates.

42. In reviewing the SKAP ratings, Mr. Beck determined that TRADOC, in generating the career program referral list, had not used the minimum acceptable SKAP ratings forwarded by DEM.

43. Plaintiff SKAP fell short of the

required minimum on 7 of the 24 elements. In addition, none of the other three candidates on the referral list met the minimum acceptable requirements, although at least one candidate clearly had better overall SKAP rating than those of Mr. Sikka.

44. Because TRADOC had not employed the minimum SKAP elements in selecting the local referral list, Mr. Beck returned the career program list to TRADOC without selecting from it, an action allowed by Army regulations.

45. After returning the TRADOC list, Mr. Beck requested the Office of the Corps of Engineers (OCE) to provide a courtesy referral list of presently employed GM-13 architects who would be willing to accept a lateral transfer to Ft. Lee.

46. While action on the courtesy

referral list was still pending, Peter Paul, a GM-13 architect, appeared on the Department of Defense "stopper list" as a priority three placement candidate for noncompetitive reassignment.

47. Within the Department of Defense, candidates from the "stopper list" having a priority three rating do not compete with promotion-eligible candidates to fill available vacancies. Such a candidate is entitled to priority consideration before merit promotion procedures are used.

48. Mr. Paul agreed to accept a lateral transfer to the supervisory architect, GM-808-13 position at Ft. Lee, and all competitive action to fill the position ceased.

I. CONCLUSIONS OF LAW

1. This action asserts claims of employment discrimination brought under

Title VII of Civil Rights Act of 1964, as amended, 42 U.S.C. s 2000e-16.

2. Plaintiff contends that he was discriminated against because of his race and national origin, and in reprisal for having filed Equal Employment Opportunity complaints. This individual "disparate treatment" employment case is subject to the well-establish burdens of proof first set forth in McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973).

3. It is well-settled that Title VII's proscriptions against discrimination and reprisal do not diminish lawful management prerogatives in making personnel decisions. United Steelworkers of America z. Weber, 443 U.S. 193, 207 (1979). So long as its reasons are nondiscriminatory, as employer is not required to give minorities preference or to restructure its practices to maximize

their employment. Texas Dept. of Community Affairs v. Burdine, 450 U.S. 248, 259 (1981).

4. A plaintiff must first prove a prima facie case of discrimination be preponderance of the evidence. If plaintiff succeeds in proving a prima facie case, the burden shifts to the defendant to articulate some legitimate, nondiscriminatory reason for the action at issue. If the defendant carries this burden, the plaintiff bears the ultimate burden of persuading the court that he has been the victim of discrimination. Id. at 256.

5. In establishing a case of intentional discrimination plaintiff's burden is considerably more than merely showing that he is a member of a protected group and did not get something he desired. In order to establish a

prima facie case, a plaintiff must demonstrate:

A. that he belongs to a protected group under Title VII;

B. that he was employed by the agency;

C. that the agency took some "adverse" personnel action against him;

D. which was not taken against similarly situated employees who were members of a non-protected group.

McDonnell Douglas Corp. v. Green, 411 U.S. 792, 802, n.13 (1973); International Brotherhood of Teamsters v. United States, 431 U.S. 324, 358, (1978). In essence, plaintiff must prove facts which, if left unexplained, create an inference that more likely than not, the adverse action was the result of

discrimination. Furnco Construction Corp. v. Waters, 438 U.S. 567, 576 (1978); Holmes v. Bevilacqua, 794 F. 2d 142 (4th Cir. 1986).

6. An inference of discrimination may be raised by proof of disparate treatment; that plaintiff was treated less favorably than a similarly situated individual not in plaintiff's protected class. Such a person outside plaintiff's class must be "similarly situated in all relevant respects. "Lanear v. Safeway Grocery, 843 F.2d 298, 301 (8th Cir. 1988). It is not up to the employer to prove dissimilarity. Id.

ALLEGATION 2

7. The evidence of record shows that a suggestion must be submitted formally to the Incentive Awards Office before a decision is made to accept it.

8. Plaintiff assumed the risk of his failure to follow the instructions on the suggestion form he filled out. Mr. Sikka never submitted a suggestion to the Incentive Awards Office as he was required to do. Thus, it cannot be said that any "adverse personnel action" was taken against the plaintiff when he did not receive an award for his suggestion.

9. In addition, plaintiff has not shown that other similarly situated individuals not protected class submitted oral suggestions to Mr. Figueras or Colonel Radcliffe which they then forwarded to the Incentive Awards office for evaluation. Thus, plaintiff has not established a prima facie case of discrimination under Title VII in regards to Allegation 2.

ALLEGATION 4

10. In regards to Allegation 4, the Army

concedes that plaintiff can establish a prima facie case of discrimination. Plaintiff was qualified for the job, and a white employee was chosen. However, the Defendant has articulated legitimate, nondiscriminatory reasons for its actions.

11. Mr. Mouring was selected for the supervisory architect position because his supervisory experience was vastly superior to that the plaintiff. In addition, Mr. Mouring's hands-on experience in energy conservation was also superior to that of the plaintiff.

12. The selection of a person other than Mr. Sikka for the supervisory architect position in 1985, when done for nondiscriminatory reasons,is personnel matter within the discretion of the Army.

ALLEGATION 9

13. In regards to the opening for the

supervisory architect position in 1987, the Defendant has articulated legitimate, nondiscriminatory reasons for its nonselection of Mr. Sikka.

14. None of the four candidates on the career program referral list met the minimum SKAP ratings forwarded by DEM.

15. Mr. Sikka was treated no differently than the other career program candidates on the referral list, at least one of whom had substantially better SKAP rating than the plaintiff.

16. Eventually, the position was filled by Peter Paul, a priority 3 registrant for the Department of Defense priority replacement program, who was eligible for a lateral, noncompetitive assignment to the GM-13 supervisory architect position. Plaintiff did not have a similar priority status.

17. Once a defendant has articulated

legitimate, nondiscriminatory reasons for his agent's actions, the plaintiff must then prove by a preponderance of the evidence that the reasons given by the defendant are pretextual Burdine, 450 U.S. at 256.

18. If the litigation reaches the third stage of the McDonnell Douglas analysis, a plaintiff's burden of showing that the reasons proffered by the defendant for its actions are merely pretext merges "with the ultimate burden of persuading the court that he has been the victim of intentional discrimination." Id.

19. To prevail on any of his allegations, the plaintiff must prove that his race, national origin, or reprisal were substantial or motivating factors in the actions alleged to have been discriminatory. Price Waterhouse v.

Hopkins, U.S. 933 (1989).

20. In this case, Mr. Sikka has failed to prove that his race, national origin, or reprisal were substantial or motivating factors in the action at issue.

21. The Army's 1985 selection of John Mouring is supported by the facts and properly within the Army's discretion.

22. The Army's rejection of the career program referral list in 1986 is supported by the facts and properly within the Army's discretion.

23. The noncompetitive reassignment of Peter Paul in 1987 is supported by the facts and properly within the Army's discretion.

24. In sum, plaintiff has failed meet his burden to prove that any of the Defendant's actions he alleges to be discriminatory were motivated by

race/national origin discrimination or causally connected to activities protected under Title VII of the Civil Right Act of 1964, as amended.

Let the Clerk send a copy of these findings of Fact and Conclusions of Law and the accompanying Final Order to the Plaintiff and to all counsel of record.

DATE 5/11/92

RICHARD L. WILLIAMS

UNITED STATES DISTRICT JUDGE

UNITED STATES COURT OF APPEALS

FOR THE FOURTH CIRCUIT

92-1683 SIKKA v. STONE

CA-91-613-3

INFORMAL BRIEF

1. DID THE DISTRICT COURT FAIL TO CONSIDER IMPORTANT GROUNDS FOR RELIEF. IF SO, WHAT GROUNDS?

This case was trialed on 30 April, 1992, in the U.S. DISTRICT COURT, Richmond, VA. District Court failed to consider numerous important facts while issuing the favorable judgement for the defendant.

Plaintiff submitted statement of facts in support of this case on April 23, 1992 and the entire record is available in U.S. DISTRICT COURT.

Plaintiff had 13 allegations as shown in summary statement which was submitted to the United States Courts of

Appeals Richmond, Va. on June 11, 1992. Only 3 allegations were trialed on April 30, 1992 which are as follows:

. **Allegation No. 2**: Denial of awards

. **Allegation No. 4**: Denial of promotion to the position of Supervisory Architect, GM-808-13

. **Allegation No. 9**: The rejection of referral list for the position of Supervisory Architect GM-808-13

District Court failed to trial other ten (10) allegations which show continuous pattern and practice of discrimination against plaintiff.

ALLEGATION NO. 2

DENIAL OF AWARDS

In December 1984, plaintiff submitted a suggestion to the DEPARTMENT OF THE ARMY (DA), Plaintiff Exhibit (PEX) H. Record is very clear and there

is no doubt that DA has adapted plaintiff's suggestion and also plaintiff produced numerous evidences of his suggestion being adapted by DA.

District Court failed to provide any award and relief to the plaintiff. Defendant's Exhibit-6 (DEX) AR 672-20, Army regulation clearly indicates that award to the suggestor if army adapts the suggestion.

District Court failed to follow this regulations and failed to provide any award/relief/judgement in favor of the plaintiff.

ALLEGATION NO. 4

DENIAL OF PROMOTION TO THE POSITION OF SUPERVISORY ARCHITECT, GM-808-13 (PEX E)

Record is very clear that the selectee (Mr. Mouring, white) did not meet the minimum requirement for this

position which was SELECTIVE PLACEMENT FACTOR for this position. He was not ELIGIBLE FOR THIS POSITION.

Record is also very clear the defendant has provided the pretextual statement and did not even provide the legitimate nondiscriminatory reason for any of the Plaintiff's allegation.

ALLEGATION NO. 9

THE REJECTION OF REFERRAL LIST FOR THE POSITION OF SUPERVISORY ARCHITECT GM-808-13

Record is very clear that the defendant took the reprisal action and created artificial barrier for plaintiff and not to consider him for Supervisory Architect position in future, even defendant abolished Supervisory Architect position in the Design Branch, allegation No. 12.

District court failed to consider that the plaintiff was highly qualified, in allegation No. 4 for GM-808-13, Supervisory Architect position in 1985 and he was not qualified for the same position in 1986.

There is no doubt that the upper management was involved in reprisal action and raised the minimum requirement for this position in discriminatory manner. During this trial plaintiff produced numerous evidences to support that defendant intentionally raised the criteria to disqualify the plaintiff.

ALLEGATION NO. 9

Evidence is very clear, strong and supported by plaintiff's Exhibit C, App 2 and App. 3 that the plaintiff has 11 "A's" ratings where as selectee, Mr. Mouring had only one "A" rating. This

evidence clearly support that plaintiff's is superior than selectee.

District Court failed to consider all these above grounds while providing the Judgement for the defendant.

2. **DID THE DISTRICT COURT INCORRECTLY DECIDE THE FACTS? IF SO, WHAT FACTS?**

It is clear that the District Court incorrectly issued the Judgement in favor of defendant. Entire record including trail's record is clear that the defendant has adapted the plaintiff's suggestion, allegation No. 2. In allegation No. 4, the selectee was not eligible and plaintiff had all superior ratings in all those elements. PEX G. In allegation No. 9, the District Court failed to consider the fact that when plaintiff name was on the referral list defendant rejected the referral list, PEX

D, APP. 4, but when plaintiff's name was not on the referral list then defendant accepted the list, PEX L, App 6.

There is no doubt and record indicated that District Court failed to consider numerous facts and even did not have full trial on all 13 allegations.

District Court failed to provide any reason why the case was not trialed on all 13 allegations, inspite court just accepted the defendant's recommendation.

3. **DO YOU THINK THE DISTRICT COURT APPLIED THE WRONG LAW? IF SO, WHAT LAW DO YOU WANT APPLIED?**

District Court adapted and rubber stamped the Defendant's proposed finding of fact and conclusions of law submitted by the defendant on April 27, 1992, in U.S. District Court, Richmond, VA. while rendering the Judgement for the

defendant. If this was the intention of the District court to rubber stamp the defendant's proposed findings of fact and conclusion of law then there was no need for the District Court to have trial for this case and District court failed to consider any evidences produced in that trial.

District court should have adapted the rules and regulations of Department of the Army submitted as an exhibits by plaintiff and defendant.

4. DO YOU FEEL THAT THERE ARE ANY OTHER REASONS WHY THE DISTRICT COURT'S JUDGEMENT WAS WRONG? IF SO, WHY?

Plaintiff strongly feels that District Court felt inappropriate to provide the favorable judgement for the plaintiff against Department of the Army/Government. There is no doubt in

plaintiff mind that the District Court has done injustice with plaintiff.

5. **WHAT ACTION DO YOU WANT THE COURT TO TAKE IN THIS CASE?**

Plaintiff respectfully requests to the United States Court of Appeals that the judgement of the District Court should be reversed and plaintiff be granted a full relief as stated the statement of points and facts submitted by the plaintiff on April 23, 1992.

6. **IF YOU THINK THE COURT SHOULD HEAR ORAL ARGUMENT IN THIS CASE, WHY DO YOU THINK SO?**

Oral arguments on all 13 allegations are necessary to render any judgement. Oral arguments also necessary which will provide more evidence for
United States Court of Appeals that

District Court failed to consider facts in numerous area and even did not consider any evidence produced in that trial.

Respectfully submitted

MAHESH C. SIKKA

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

MAHESH C. SIKKA Plaintiff-Appellant,	)	
v.	)	No. 92-1683
MICHAEL P.W. STONE Secretary, Department of the Army Defendant-Appellee	)	

Appeal from the
United States District Court
for the Eastern District of Virginia,
at Richmond
Richard L. Williams,
Senior District Judge
(CA-91-613-3)

Submitted: June 30, 1993
Decided : July 26, 1993

Before MURNAGHAN, WILKINS, and HAMILTON, Circuit Judges.

Affirmed by unpublished per curiam opinion

COUNSEL

Mahesh C. Sikka, Appellant Pro Se. Debra Jean Prillaman, Assistant United States

Attorney, Richmond, Virginia; Dana Kyle Chipman, UNITED STATES ARMY, Arlington, Virginia, for Appellee

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Unpublished opinions are not binding precedent in this circuit. See I.O.P. 36.5 and 36.6

OPINION

PER CURIAM:

Mahesh C. Sikka appeals from the district court's order denying his claims of employment discrimination in violation of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C.A. SS 2000e through 2000e-17 (West 1981 & Supp. 1993). Our review of the record and the district court's opinions discloses that this appeal is without merit. Accordingly, we affirm on the reasoning of the district court. Sikka

v. Stone, No. CA-91-613-3 (E.D. Va. Apr. 30,1992; May 11, 1992). We dispense with oral argument because the fact and legal contentions are adequately presented in the materials before the Court and argument would not aid the decisional process.

AFFIRMED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT
Richmond, Virginia

MAHESH C. SIKKA Plaintiff-Appellant	)	
v.	)	No. 92-1683
MICHAEL P.W. STONE Secretary Department of the Army Defendant-Appellee	)	

PETITION FOR REHEARING

Mahesh C. Sikka, Appellant Pro Se. respectfully request the United States Court of Appeals For the Fourth Circuit to reopen and rehear its judgement in the above captioned case. Appellant brief is enclosed.

Appellant strongly feels that court of appeals failed to consider thirteen (13) allegations. Appellant feels that discrimination was proved in the District Court. There is no doubt in

the appellant's mind that District Court provided favorable judgement to the Department of the Army. Every allegation is valid and has a merit, particularly allegation number four (4) explained in the informal brief **and even Defendant record shows that selectee was not even qualified for the Supervisory Architect position.**

Therefore, I request Court of Appeals to rehear and reopen the above case.

Respectfully Submitted

MAHESH C. SIKKA
4 August 1993

UNITED STATES COURT OF APPEALS

FOR THE FOURTH CIRCUIT

FILED

August 23, 1993

No. 92-1683

CA-91-613-3

MAHESH C. SIKKA

Plaintiff-Appellant

v.

MICHAEL P.W. STONE, Secretary,
Department of the Army

Defendant-appellee

ORDER

The appellant has filed a petition for rehearing. The Court denies the petition for rehearing.

For the Court,

/s/ Bert M. Montague

CLERK